

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(ALEXANDRIA DIVISION)**

STEVEN BRADLEY, et al.,

Plaintiff,

v.

GANNETT CO., INC.,

Defendant.

Case No.: 1:23-cv-01100-RDA-WEF

**GANNETT’S NOTICE OF SUPPLEMENTAL AUTHORITY
IN SUPPORT OF ITS MOTION TO DISMISS AMENDED COMPLAINT
AND TO DISMISS/STRIKE CLASS ALLEGATIONS**

Defendant, Gannett Co., Inc. (“Gannett”), files this Notice to bring to this Court’s attention *Duvall v. Novant Health, Inc.*, No. 22-2142 (4th Cir. March 12, 2024) (copy attached as **Exhibit A**). Although *Duvall* involves a different statute and different procedural posture from the instant case, the discussion therein is relevant to a key aspect of Gannett’s pending Motion to Dismiss Amended Complaint and to Dismiss/Strike Class Allegations (Dkts. 33-35).

Importantly, in *Duvall*, the Fourth Circuit did not find that all DEI programs are unlawful. Rather, it was the inclusion of race in a system-wide decision making process and evidence that the decision making process was the reason for Plaintiff’s termination and subsequent replacement by minorities, that tipped the balance :

To be clear, employers may, if they so choose, utilize D&I-type programs. What they cannot do is take adverse employment actions against employees based on their race or gender to implement such a program. And as recounted above, the evidence presented at trial in this case was more than sufficient for a reasonable jury to conclude that is precisely what Novant Health did to Duvall.

Id. at 22 n.10.

Gannett is pleased to submit additional briefing on the relevance of *Duvall* to the presently pending Motion to Dismiss if the Court so desires.

Dated: March 20, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 20, 2024, I caused to be served a copy of the foregoing on Plaintiff via the Court's CM/ECF system and via electronic mail to the following:

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